

State of Alaska FY2005 Governor's Operating Budget

Department of Law Commercial and Fair Business Component Budget Summary

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Component: Commercial and Fair Business**Contribution to Department's Mission**

The Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws and to represent the public interest in state regulation of utilities, all of which is aimed at protecting the public. This section also provides advice and representation to various departments and agencies of state government to assist them in the performance of their functions.

Core Services

The Commercial and Fair Business Section has one of the more diverse law practices within the Department of Law. This section exercises the Attorney General's authority to enforce state consumer protection laws and antitrust laws and to represent the public interest in utility matters before the Regulatory Commission of Alaska. The section also provides representation, defense, advice, and counsel to 15 different divisions, commissions, and corporations within the Department of Revenue, Department of Public Safety, and the Department of Community and Economic Development.

DEPARTMENT OF REVENUE:**Tax Division (non-oil and gas tax):**

- Assist in negotiation of income and excise tax settlements.
- Defend appeals of tax assessments.
- Defend tax legislation against constitutional challenges.
- Appeal adverse decisions of the office of tax appeals to the superior court.
- Defend appeals or original actions on unclaimed property and provide legal advice concerning contracts with third parties for collection of unclaimed property.
- Defend appeals or original actions in enforcement of charitable gaming.
- Assist in drafting regulations.
- Prosecute non-participating tobacco manufacturers who violate the Master Settlement statute.

Treasury Division:

- Monitor and work with outside counsel on and securities fraud litigation involving state investments

Permanent Fund Dividend Division:

- Defend appeals of dividend denials.
- Assist in drafting regulations.
- Defend division against original actions.

Permanent Fund Corporation:

- Monitor and work with outside counsel on and securities fraud litigation involving corporation investments.
- Provide legal advice on corporate matters.

Alaska State Pension Investment Board:

- Monitor and work with outside counsel on and securities fraud litigation involving pension investments.
- Provide legal advice regarding public information requests.

Alaska Housing Finance Corporation:

- Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.
- Provide legal advice relating to AHFC's mortgage lending, public housing, construction and residential energy activities.
- Represent the corporation in litigation.

DEPARTMENT OF PUBLIC SAFETY:**Alcoholic Beverage Control Board:**

- Provide legal advice regarding the issuance and renewal of alcoholic beverage licenses and on disciplinary matters relating to license holders.
- Assist the board with the drafting and adoption of regulations.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT:

Division of Insurance:

- Provide legal advice regarding insurance enforcement matters and represent the division in administrative adjudications involving insurance licensees.
- Assist the division in drafting regulations and legislation.
- Represent the director in court proceedings including administrative appeals of director decisions and insurance company liquidation proceedings

Division of Occupational Licensing:

- Assist in negotiation of settlements or resolutions of license denials and license discipline.
- Defend appeals of license denial.
- Advise professional boards on legislative and constitutional limitations on their authority.
- Assist in drafting and repealing of regulations.
- Assist in drafting legislation
- Assist in prosecuting actions to suspend tobacco endorsements of retailers for selling tobacco to minors

Division of Investments:

- Obtain judgments on defaulted loans.
- Represent the division in admiralty cases brought in U.S. District Court.
- Provide legal advice.

Division of Banking, Securities and Corporations:

- Defend appeals of cease and desist orders against securities brokers and salespeople.
- Defend appeals of orders regarding proxy challenges.
- Provide legal advice.

Regulatory Commission of Alaska:

- Provide legal advice to the Commission about legal issues raised in filings and assist in the review of orders issued by the Commission

DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

Alaska Student Loan Corporation:

- Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.
- Assist in drafting legislation and regulations.

Alaska Commission on Postsecondary Education:

- Provide legal advice relating to ACPE's student loans, collections, regulations and legislation.

Professional Teaching Practices Commission:

- Provide advice and represent staff in teacher discipline matters

FY2005 Resources Allocated to Achieve Results

FY2005 Component Budget: \$4,061,800

Personnel:

Full time	33
Part time	3
Total	36

Key Component Challenges

Alaska is a target state for many types of consumer fraud. Under the authority of the Consumer Protection Act (AS 45.50.471 et seq.), the Commercial and Fair Business Section investigates and brings enforcement action against businesses that engage in unfair or deceptive trade practices. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, the section is still forced to turn away many legitimate cases of consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough resources for even those cases. We continue to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY 2000 and increased again for FY2004. To help ensure receipt of statutory designated program receipt resources, the department needs to maintain the section's participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers. The department also needs to take all other appropriate steps to ensure receipt of statutory designated program receipts on a regular basis in FY 2005 to help fund the consumer protection program.

Under the Governor's Executive Order 111, the public advocacy function of the Regulatory Commission of Alaska (RCA) was transferred to the Attorney General. The Commercial and Fair Business Section through lawyers in the section have been tasked with implementing this transfer of authority, making recommendations to the Attorney General on regulatory matters that involve the public interest, and advocating on behalf of the public interest before the RCA. In the current and upcoming fiscal years, this new authority will require the development of standards and procedures to enhance the effectiveness of our advocacy efforts. Long term challenges will include maintaining adequate funding for the public advocacy function and developing effective expertise in the areas of finance, economics and engineering.

Significant Changes in Results to be Delivered in FY2005

No service changes

Major Component Accomplishments in 2003

- Negotiated settlements in two consumer protection enforcement matters that will result in approximately \$120,000 statutory designated program receipts in the next two years.
- Collected final \$50,000 payment in settlement of a consumer protection action against a local car dealer for various advertising, warranty, and federal Truth in Lending Act violations.
- Collected \$300,000 from Ford Motor Company in a multistate consumer protection settlement.
- Finalized settlement agreements in two multistate consumer protection and antitrust cases that will result in excess of \$100,000 in statutory designated program receipts
- Adopted regulations to implement a new state law that requires the Attorney General to approve collective negotiation agreements between physician groups and health benefit plans.
- Designed and led implementation of a comprehensive securities litigation monitoring system for all of the state's investment portfolios that allows for immediate access to portfolio and loss data and that allows us to move rapidly to protect the state's interests if we need to.
- Assisted in successful resolution of the permanent fund tax status issue resulting in a legal opinion that categorically determined that the permanent fund is not subject to federal income taxation. This put to rest an issue that has been troubling policy makers since the mid-1980s.
- Received favorable decision in occupational license discipline case involving a real estate licensee whom the state proved had committed fraud and had conflict of interest, which resulted in his license being revoked.
- Successfully negotiated a settlement in an occupational license discipline case involving a physician whose license had been summarily suspended by the medical board because the physician was self medicating, had made suicidal statements, and had prescribed large amounts of controlled substances to a patient without medical justification.

- Successfully prosecuted separate discipline cases involving two certified nursing aide licensees, one who had been convicted of sexual abuse of a minor and one who had been convicted of forgery and failed to disclose it; the aide's license was revoked in each matter.
- Successfully prosecuted a discipline case involving a teacher whom the state proved had engaged in sexual and racial harassment, resulting in revocation of teacher's certificate to teach.
- Successfully defended a superior court appeal of an order of the Professional Teaching Practices Commission that revoked a teaching certificate.
- Successfully defended the Regulatory Commission of Alaska in federal court and before the Ninth Circuit Court of Appeals on Eleventh Amendment immunity grounds.
- Successfully negotiated settlements in four separate rate matters before the Regulatory Commission of Alaska involving a natural gas utility, water and sewer utility, and several rural telephone utilities.
- Successfully defended the Alaska Commission on Postsecondary Education in an action in superior court brought by a debtor who alleged breach of contract, due process violations and civil rights claims; the case was dismissed on statute of limitation grounds.
- Successfully defended the constitutionality of state statutes and regulations governing the new professional license categories of body piercing, tattooing, and permanent cosmetic coloring. After the state filed its motion for summary judgment in the case, the plaintiff (license applicant) agreed to dismiss the case.
- Successfully litigated case against Fairbanks branch office of national investment firm for violations of state securities law.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
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Commercial and Fair Business Component Financial Summary

All dollars shown in thousands

	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	0.0	2,980.9
72000 Travel	0.0	0.0	33.9
73000 Contractual	0.0	0.0	946.4
74000 Supplies	0.0	0.0	84.4
75000 Equipment	0.0	0.0	16.2
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	0.0	4,061.8
Funding Sources:			
1004 General Fund Receipts	0.0	0.0	531.1
1005 General Fund/Program Receipts	0.0	0.0	50.0
1007 Inter-Agency Receipts	0.0	0.0	2,845.8
1108 Statutory Designated Program Receipts	0.0	0.0	634.9
Funding Totals	0.0	0.0	4,061.8

Estimated Revenue Collections

Description	Master Revenue Account	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	0.0	0.0	2,845.8
General Fund Program Receipts	51060	0.0	0.0	50.0
Statutory Designated Program Receipts	51063	0.0	0.0	634.9
Restricted Total		0.0	0.0	3,530.7
Total Estimated Revenues		0.0	0.0	3,530.7

**Summary of Component Budget Changes
From FY2004 Authorized to FY2005 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2004 Authorized	0.0	0.0	0.0	0.0
Adjustments which will continue current level of service:				
-Positions and Funds from Commercial Section	385.8	0.0	1,755.5	2,141.3
-Positions and Funds from Fair Business Practices	176.9	0.0	1,570.7	1,747.6
-Changes to Retirement and Other Personal Services Rates	18.4	0.0	154.5	172.9
FY2005 Governor	581.1	0.0	3,480.7	4,061.8

Commercial and Fair Business Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY2004</u> <u>Authorized</u>	<u>FY2005</u> <u>Governor</u>		
Full-time	0	33	Annual Salaries	2,231,249
Part-time	0	3	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	846,299
			<i>Less 3.14% Vacancy Factor</i>	(96,648)
			Lump Sum Premium Pay	0
Totals	0	36	Total Personal Services	2,980,900

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	1	0	2
Assoc Attorney II	1	0	1	0	2
Attorney III	2	0	1	0	3
Attorney IV	12	0	5	0	17
Attorney V	2	0	0	0	2
Attorney VI	1	0	0	0	1
Law Office Assistant I	5	0	1	0	6
Law Office Assistant II	1	0	0	0	1
Paralegal II	2	0	0	0	2
Totals	27	0	9	0	36